

REMARKS

Claims 16-23, 25-44 and 46-47 are pending in this application. By this Amendment, claim 48 is added.

Applicants thank the Examiner for the indication that claim 36 contains allowable subject matter. However, because the base claim is allowable for the reasons discussed below, this claim is not placed in independent form at this time.

I. Pending Claims Define Patentable Subject Matter Over Repeated Grounds of Rejection

In the Office Action, claims 16-17, 20, 22, 26, 27 and 47 are rejected under 35 U.S.C. §103(a) over U.S. Patent No. 1,364,188 to Draenert in view of German Patent Publication No. DE 4,207,581A1 to Wanzl. Additionally, claims 19, 21, 25 and 46 are rejected under 35 U.S.C. §103(a) over Draenert in view of Wanzl. These rejections are respectfully traversed.

The Office Action repeats in its entirety the prior rejection of these claims. However, the Office Action fails to address the numerous rebuttal grounds advanced in Applicants' June 7, 2005 Amendment. Because Applicants previously rebutted the grounds of rejection, the burden of persuasion remains with the Patent Office. Accordingly, no additional reply is deemed necessary. Instead, Applicants reiterate their previous distinctions.

In particular, each of independent claims 16, 46 and 47 are directed to a toothbrush having a bristle-carrying front head part and a handle provided with an essentially cylindrical enclosed inner cavity extending over at least part of the length of the handle. The part of the handle that encloses the cavity is at least partially transparent. The elongated article provided for an aesthetic effect is accommodated in the closed cavity, extends in the longitudinal direction of the toothbrush, and is visible at least partially through the transparent part of the handle. The elongated article is in the form of a cylindrical hollow roll having an essentially cylindrical outer surface bearing against an inner wall of the cavity.

None of the applied references teach or suggest such a combination of features.

Draenert discloses a toothbrush in Figs. 2 and 3 provided with a hollow transparent handle 3. However, the handle has a rectangular cross-section. Moreover, although flat strips 20 containing advertising matters 21 are provided, these are placed on a front surface of the handle and a face plate 23 is provided over the strips to form a cover (Page 2, lines 27-36 and 42-52). Draenert differs from the recited claims in several respects. First, the cavity in Draenert is substantially rectangular and initially opens in its length on one or more sides. Second, the strips 20 are in strip form, not in a hollow roll form. Third, the strips 20 do not bear against an inner wall of cavity 4. Instead, strips are placed over open front and back sides of the open cavity and form the inner walls of the cavity. The strips are then covered by faceplates 23. Thus, at best, the strips are incorporated to form a wall of the cavity 4, but do not bear against an inner wall of the cavity.

Wanzl fails to overcome the deficiencies of Draenert with respect to independent claim 16, 46 and 47. Wanzl is not directed to a toothbrush, but is instead directed to a shopping cart 1 that is provided with a push handle 5 (Fig. 2). Handle 5 has a cylindrical cross-section and includes a tubular inner handle member 7. A sheet-like printed insert 8 is placed around the handle member 7 and covers the latter around at least part of its circumference. Printed insert 8 is then covered by a cover member 9, which consist of a transparent material.

First, Wanzl is directed to non-analogous art. A person skilled in the art concerned with improving the design of a toothbrush would not look to the field of shopping carts for inspiration. This is particularly the case where a toothbrush is a hygiene article that must be placed in a person's mouth and has sterilization and other hygiene concerns and a shopping cart is subjected to repeated use by multiple individuals and is subjected to dirt, contaminants, and germs.

Moreover, even if a person skilled in the art would have combined the teachings of Draenert and Wanzl, the combination would not result in the toothbrush recited in claims 16, 46 and 47. This is because in Wanzl the printed insert is arranged between handle member 7 and cover member 9, and is not bearing against an inner wall of the cavity member as claimed. Rather, at best, the combination would provide a toothbrush handle consisting of an inner tubular support member corresponding to handle member 7 of Wanzl covered by a printed sheet corresponding to printed sheet 8, which is in turn covered by a transparent protective cover, corresponding to cover member 9 of Wanzl.

Accordingly, independent claims 16, 46 and 47 define over Draenert and Wanzl and contain patentable subject matter. Dependent claims 17, 19-22, 25-27 and 48 are also allowable for their dependence on allowable independent claim 16, and for the additional features recited therein. In particular, new claim 48 adds that the cross-section of the handle varies along the longitudinal direction. This feature is supported, for example, by Applicants' Fig. 2 and is not taught in Draenert or Wanzl. Due to this cross-sectional variation, a magnifying effect can be achieved when viewing the article, providing an aesthetic effect to the handle. Withdrawal of the rejections is respectfully requested.

In the Office Action, claim 23 is rejected under 35 U.S.C. §103(a) over Draenert in view of Wanzl, further in view of U.S. Patent No. 3,325,847 to Meranto. This rejection is respectfully traversed.

Meranto fails to overcome the deficiencies of Draenert and Wanzl with respect to independent claim 16. Moreover, cover 14 in Meranto is not a closure part designed to close an inner cavity, but is instead designed to fit over a conventional toothbrush handle. Accordingly, claim 23 is allowable for its dependence on allowable base claim 16, as well as for the additional features recited therein. Withdrawal of the rejection is respectfully requested.

II. Pending Claims Define Patentable Subject Matter Over New Grounds of Rejection Based in Part on Non-Prior Art Reference

Applicants note with appreciation the withdrawal of the prior rejections based on Draenert and Tortorice in favor of new grounds of rejection. In particular, the following new rejections are made: (1) claims 28-29, 32, 35, 37, 39 and 43-44 are rejected under 35 U.S.C. §103(a) over Draenert in view of U.S. Patent No. 6,474,467 to Kurdian; (2) claims 30-31 and 33-34 are rejected under 35 U.S.C. §103(a) over Draenert in view of Kurdian; (3) claims 38 and 42 are rejected under 35 U.S.C. §103(a) over Draenert and Kurdian; and (4) 40-41 are rejected under 35 U.S.C. §103(a) over Draenert in view of Kurdian, further in view of Meranto. These rejections are respectfully traversed.

The subject matter of independent claim 28 was outlined in Applicants' June 7, 2005 Amendment.

Draenert as admitted in the Office Action fails to provide an ampoule with an enclosed cavity as claimed. For this feature, the Office Action now relies on Kurdian. However, Kurdian does not constitute prior art.

In accordance with MPEP §201.11(a), Applicants are entitled to an effective U.S. filing date as of May 23, 2000, the date of Applicants' international PCT application from which this application properly claims priority.¹ This predates the September 7, 2001 U.S. filing date of Kurdian. Accordingly, Kurdian does not constitute prior art to this application.

Because Kurdian is not available as a prior art reference and the Office Action admits to deficiencies in Draenert and optionally Meranto, the Patent Office has failed to establish a prima facie case of obviousness with respect to the rejected claims. Accordingly, in view of

¹ See also 35 U.S.C. §363 which provides that "an international application designating the U.S. shall have the effect from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office."

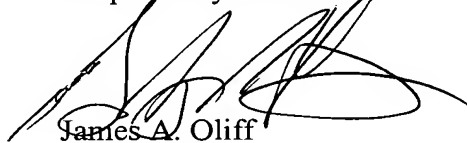
this and the withdrawal of the prior grounds of rejection, the rejected claims are deemed to contain allowable subject matter. Withdrawal of the rejections is respectfully requested.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 16-23, 25-44 and 46-48 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



James A. Oliff
Registration No. 27,075

Stephen P. Catlin
Registration No. 36,101

JAO:SPC/spc

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OLIFF & BERRIDGE, PLC
P.O. Box 19928
Alexandria, Virginia 22320
Telephone: (703) 836-6400

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